DOCUMENT RESUME

ED 149 121 CE 014 374

AUTHOR	Melli, Marygold Shire
TITLE	The Legal Status of Homemakers in Wisconsin.
INSTITUTION	Center for Women Policy Studies, Washington, D.C.
SPONS AGENCY	National Commission on the Observance of International Women's Year, Washington, D.C.
REPORT NO	LS-Wis-50
PUB DATE	May 77
NOTE	54p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Stock Number 052-003-00351-1, $2.00)
EDRS PRICE	MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS	*Civil Liberties; Divorce; Federal Legislation; Financial Support; *Housewives; Legal Aid; *Legal Problems; Legal Responsibility; Marriage; Mothers; Sex Discrimination; Social Values; *State Legislation; *Status; Taxes; Widowed
IDENTIFIERS	Wife Abuse; *Wisconsin

ABSTRACT

This report focuses on laws in the state of Wisconsin as they relate to homemakers. Four areas are discussed, each in separate sections: marriage, widowhood, divorce, and wife abuse. The section on marriage includes information on property rights, disability and death of homemaker, federal Equal Credit Opportunity Act, domicile, interspousal immunity, and keeping your own name. The section on widowhood presents information on special family rights, considerations for whether a husband leaves a will, agreements regarding estates, inheritance tax, federal estate tax, and social security and pensions. In the section on divorce, problems connected with divorce are presented and include discussion of property division, support, enforcement of support, ensuring a source of support money, establishing a mechanism for collecting unpaid money, assistance from federal government in collection of support, child custody, and current practice. The final section considers the problems of wife abuse. This report also includes an introductory message from Martha Griffiths, Chairperson, Committee on Homemakers, National Commission on the Observance of International Women's Year. Recommendations of the Homemaker Committee and a bibliography of twenty-four publications are appended. (BL)

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THE LEGAL STATUS OF HOMEMAKERS

IN WISCONSIN

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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BY MARYGOLD SHIRE MELLI

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This leaflet is based on the laws and judicial precedents in effect in Wisconsin on February 1, 1977.

May 1977

OE 014 374

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MESSAGE FROM MARTHA GRIFFITHS

Importance of Legal Status of Homemaker to All Women

The legal status of homemakers is of most direct importance to the minority of women whose husbands neglect to make a will or fail to be honorable and decent in their relationships with their wives and children, for these are the women who experience the effects of the law most directly. The legal status of homemakers, however, has great significance for all women, for the parents of daughters, and for the society at large.

The rights of homemakers under support laws, property laws, divorce laws, and inheritance laws are the concrete evidence of the value society places on the homemaker's role. If women's work is not valued in the home, it has a low value outside the home. If our daughters (and sons) cannot expect that their work in the home will be recognized as of equal value and deserving equal dignity with that of the spouse who works outside the home, the institution of the family and our society will suffer. The laws in most States are not grounded in this evaluation of the homemaker's role.

The laws under consideration in this leaflet apply to all wives (and in most cases to husbands) whether they work at home or outside the home. This paper, however, has been written from the viewpoint of the homemaker not employed outside the home, because she (or he) is the most vulnerable to economic inequalities.

Divorce Arrangements as an Indicator of Worth of Homemakers

Because divorce is usually the only way a wife can enforce support rights, property settlements at divorce, and awarding of alimony (or maintenance), and child support provide the best evidence of the worth ascribed to the homemaker in the law. With 1,000,000 divorces in 1975, the economic impact of divorce on women and children is important to the society.

Inadequacy of Present Data

There is very little information of any kind available on economic arrangements at divorce and none that can be analyzed State by State. All available data, however, point to the conclusion that alimony is granted in only a very small percentage of cases, that fathers, by and large, are contributing less than half the support of the children in divided families, and that the enforcement of alimony and child support awards is very inadequate.[1]

One 1972 nationwide study of 133 couples divorced since 1968 concluded, "Probably because children usually remain in the maternal family after a separation, the economic status of former husbands improves while that of the former wives deteriorates." This statement is based on the status after alimony and child support payments are made.[2]

A poll of 1,522 women conducted in September 1975 at the request of the National Commission indicated the same pattern with respect to relative economic status and also indicated that only 14 per cent of divorced wives are entitled to alimony by award of the courts or through a voluntary settlement approved by the courts. Of the 14 per cent, only 46 per cent collect it regularly.[3] Only 44 per cent of divorced mothers were awarded child support and 47 per cent were collecting regularly.

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1. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws", Department of Labor, Women's Bureau, Washington, D.C. 20210.

2. Duncan, Greg J. and Morgan, James N., editors, Five Thousand American Families - Patterns of Economic Progress, Vol. III, p. 185, Survey Research Center, Institute for Social Research, University of Michigan, Ann Arbor, Michigan 48106.

3. Poll of 1,522 women conducted in September 1975 by Market Opinion Research for the National Commission on the Observance of International Women's Year. A summary of the findings will be published by the Commission.

Women have never received alimony on a large scale. In 1922, the last year in which the U.S. Government collected national data, alimony was awarded or agreed to in 14.7 per cent of divorces. The proportions varied widely by State -- from 0.5 per cent in Pennsylvania and 0.7 per cent in Texas to 48.2 per cent in Wisconsin. In 1916 alimony was awarded in 15.3 per cent of divorces and was no higher in earlier years.4/

Collection of alimony and child support is clearly a problem of national proportions. At my request in 1974, as Chair of the Subcommittee on Fiscal Policy of the Joint Economic Committee, U.S. Congress, the General Accounting Office reviewed a sample of recipients of aid to families with dependent children in seven States and found that many fathers were not under any court order or voluntary agreement to pay child support; that the amounts supposed to be paid had little relationship to the father's ability to pay; and that less than one-half of the amounts due were being collected.5/

Effort of Committee to Gather Facts

The National Commission has recommended to the President that data be collected by the Bureau of the Census on economic arrangements at divorce, including the proportion of the support of children that is being contributed by each spouse and by the State through welfare programs. Part of the desired information is being collected in the 1976 Survey of Income and Education, and the Department of Health, Education, and Welfare plans to collect the remainder in 1976.

In addition, the National Commission, through its Committee on the Homemaker, is spending a large portion of its resources to secure these analyses by States, with examples, of how the laws affect homemakers during marriage, at widowhood, and at divorce. The Committee

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4. Bureau of the Census, Marriage and Divorce, 1922, Government Printing Office, Washington, D.C. 20401.

5. General Accounting Office, "New Child Support Legislation - Its Potential Impact and How to Improve it," Single copies available from Members of Congress.

contracted with the Center for Women Policy Studies for the preparation of this leaflet and similar leaflets for all other States and the District of Columbia.

Since the primary purpose of the Committee are to make recommendations for reform in areas where homemakers are inequitably treated, and to inform the public about little known aspects of domestic relations law, our papers in this series emphasize those laws and judicial precedents that fail to give proper recognition to the value of the homemaker and the welfare of children and those about which there is little general knowledge. The cases are chosen to illustrate these problems. The authors were asked to include any available statistical information or factual studies on the topics covered, but there seems to be even less available locally than is available nationally.

Recommendations of Committee

Based on these analyses of State laws and presentations by experts, the Committee on the Homemaker has proposed and the National Commission has endorsed several specific recommendations to improve the status of the homemaker and raised a number of questions for further study. The recommendations and questions are quoted following the discussion of State laws.

The Commission's Report "...To Form a More Perfect Union..." includes these and over 100 other recommendations with supportive information. Copies are available from the Government Printing Office, Washington, D.C. 20401.

I hope concerned readers will urge organizations interested in the status of women and preservation of the family to make detailed studies of the State laws covered in this leaflet and their application and of the recommendations of the Commission. Other publications that may be useful in such a study are listed on the last three pages of this leaflet.

Where permitted, "court watching" is an effective technique for learning how laws are actually applied in divorce cases, what changes are needed, and for sensitizing judges and other court personnel to the legitimate needs of dependent spouses (usually women) and children. It is easy for judges to over-emphasize

the needs of the chief wage earner (usually husbands) and fail to even think about how the wife and children will live on what is left over after his needs are met. Court watching may reveal that there are not enough judges and supporting staff to give adequate consideration to each case, or that the quality of judges and other staff needs to be improved.

Most importantly, those concerned with the status of women and the family should insist that State legislatures and the U.S. Government give a high priority to the revisions in State and Federal law needed to recognize the homemaker's role as having equal value and deserving equal dignity with that of the spouse who works outside the home.

Martha Griffiths

Martha Griffiths, Chair
Committee on the Homemaker

WHAT'S A GOOD HOUSEWIFE WORTH?

So you want to be a housewife and a mother. Good, it is indeed a noble calling! According to the Wisconsin Supreme Court: "The role of mothers who stay home and give meticulous care and abundant love to their children of very tender age is one of womankind's noblest and most rewarding functions."1/

MARRIAGE

Usually when you consider a job, you look at the economic security it may offer you--how much you're paid, what the retirement benefits are. Housewifery and motherhood--for all their virtues--are not regarded as "work." They have no economic value. As Bernard Shaw aptly expressed it:

> The most important and indispensable work of women, that of bearing and rearing children, and keeping house for them, was never paid for directly to the woman but always through the man and so many foolish people came to forget that it was work at all, and spoke of Man as The Breadwinner. This was nonsense. From first to last the woman's work in the home was vitally necessary to the existence of society, whilst millions of men were engaged in wasteful or positively mischievous work, the only excuse for which was that it enabled them to support their useful and necessary wives. . . .2/

Property Rights

Of course, you say, I won't be paid. My husband and I will work together. I will help him by providing him with good meals, washing and mending his clothes, cleaning the house for him, picking up after him, taking care of the children. He will be paid for what he does, and the money he earns will belong to both of us.

Not so, says the law. Wisconsin is a "separate property" State. This means that property acquired by either spouse

during marriage belongs to the one who acquires it, that is, the one who paid for it. If the husband is the only spouse earning money, all property acquired during the marriage is paid for and--therefore--owned by him. He may choose to put property in joint ownership or in his wife's name. If he does this, he has, legally speaking, made a gift to his wife. The law does not recognize any value for her contribution as a housewife. The Wisconsin gift tax exemption for a spouse is $15,000 per lifetime plus $3,000 (noncumulative) per year.[3] This exemption probably still covers the wife's share of a down payment on a home but, as the price of houses skyrockets with inflation, it soon may not.

Unfortunately, many women spend years scrimping and doing without personally, to save their husbands' money. Take the case of Eva Johnson.[4] She is 77 years old, in poor health, and in a nursing home. Eva has been a traditional housewife. She raised five children, practically single-handedly, because Herbert, her husband, was so busy with his growing business. All the children are now successful, productive members of society. Eva always tried to run her household as economically as possible, and the Johnsons' friends often cited her as an example of a frugal housewife. Although she had five children, she had no household help. She did her own cleaning, washing, ironing, and yard work--with help from the children as they grew older. She sewed beautifully and made many of the clothes worn by the children and herself. To save the expense of owning a second car, she took the bus or drove Herbert to work and picked him up whenever she needed the car. She found neighbors with whom she traded babysitting to keep child care costs to a minimum. When Herbert's business prospered and they built a new house in an upper-middle-class neighborhood, Eva made all the drapes and curtains, wallpapered some of the rooms, and laid the tile in the basement recreation room.

Until several months ago, Eva and Herbert, who is also 77, lived alone with Herbert struggling to care for her. Eva's condition worsened until she was placed in a nursing home. Now, although she is much better, she would prefer to stay in the nursing home, feeling that the living conditions

there are much better than at home alone with a very elderly person to care for her. She also feels that her care is too much for Herbert and that the need to give her constant help is undermining their relationship. However, Herbert does not see things that way and balks at having Eva stay on at the nursing home. The matter has become one of deep disagreement. Eva argues that "we have the money and I'll use my share to live comfortably for my last days." But as Herbert points out, "we" have no money. "He" has the money and although he has an obligation to support Eva, Herbert chooses the manner and level at which that support will be granted.[5] Certainly Eva cannot expect help from the courts. It is perfectly clear in American law that the courts will not interfere in an intact marriage, that is, one in which no separation has taken place.[6]

However, times are changing. Many married women, perhaps a majority, work at "gainful" employment. The separate property system would appear to be fair under those circumstances. Perhaps, but let's look at a few problems. If, for example, the work you do is for your husband in his business, you may not be earning your own money. The Wisconsin statutes, although allowing a married woman to own and control her own earnings generally, still give her husband control of earnings "from labor performed for her husband, or in his employ or payable by him."[7]

Although this statute may be unconstitutional as a denial of equal protection to married women, there are other problems. The Wisconsin Supreme Court has refused to recognize a husband-wife partnership for income tax purposes unless there was a formal partnership agreement, even though the property was jointly owned and the work jointly performed. For example, take the case of Ellen Skaar. She and her husband were farmers and both worked hard to make a success of their farm, which they owned as joint tenants. She milked and fed cows two times a day; took care of the chickens; baled hay, drove the baler, and unloaded hay; she prepared the tobacco seed bed, set the plants, helped with the harvest and with the stripping; she drove the tractor. She estimated that she probably

worked 12 hours a day on the farm--more than her husband, whose duties as town chairman and chairman of the county drainage board took him away from the farm. But when Mrs. Skaar and her husband tried to report half the farm income as hers for Wisconsin income tax purposes, the Wisconsin Supreme Court found the income all attributable to the husband.[8]

Even in the case of the woman who works for an outside employer and, therefore, is clearly entitled to her own earnings under Wisconsin law, the separate property system may not be an equitable arrangement. Several factors work together to produce this inequity. First, in the typical marriage, the work of the income-producing wife is secondary to that of her husband. The wife usually cannot make a lifetime career commitment to her work. She does not work continuously throughout her adult life, but takes "time off" to bear and raise children; she does not move the family to accept more advantageous work. Second, in the typical marriage, there is very little sharing of household maintenance and child-care duties. Studies show that the income-producing wife maintains the household in addition to her job.[9] This means that the husband is free to devote more time and energy to his income-producing job.

When these factors are added to the lower wages usually paid to women, it is clear that a typical wage-earning wife produces much less income than her husband over the course of a marriage. Under these circumstances, basing the property ownership in marriage on income production is not an equitable arrangement.

In the rare case where a gainfully employed wife earns as much as or more than her husband, the separate property laws are, of course, much more equitable. Unfortunately, however, society often tends to treat her as if she were a dependent spouse. For example, in spite of legislation prohibiting discrimination, a married woman still has difficulty obtaining credit in her own name and on the basis of her own earnings. No matter how much money she earns it's much less trouble to obtain credit in her husband's name and over his signature.

Disability and Death of Homemaker

In addition to the drawbacks to the wife, a family is disadvantaged in many ways by the fact that as a homemaker a woman is not considered "employed." Since she is not eligible to have a Social Security account of her own, she has no disability or survivors' insurance in the event that she, for example, becomes blind and cannot care for her children and home, or she dies. Whatever it costs the family to replace her services must somehow be found in the household budget.

Federal Equal Credit Opportunity Act

Serious problems for married women, divorcees, and widows have arisen from the fact that credit accounts, even joint accounts, have been customarily carried in the husband's name by creditors and consumer reporting agencies. Thus when a wife, widow, or divorcee with her own property or independent income, applies for credit in her own name, her application may be denied because she has no credit history of her own. Some creditors will not take the risk of extending credit to someone, who according to all records available, does not have a history of satisfactory payment.

Regulation B, issued by the Federal Reserve Board to implement the Federal Equal Credit Opportunity Act, attempts to remedy the situation. The regulation provides that after June 1, 1977, creditors must determine as to each new account whether both spouses will be contractually liable, or whether the applicant's spouse will be permitted to use the account (if the account is for open end credit). If the answer is yes, the creditor must report the account to the credit bureau in a manner which will reflect the participation of both spouses. For accounts already in existence on June 1, the regulation requires that creditors must determine from a review of their files whether an account is one which should reflect the participation of both spouses. Alternatively, the creditor must mail a notice to all account holders,

notifying them of the right to have the credit information so reported.

In requiring credit designation and credit reporting in this manner, even when the wife is not contractually liable, the Board recognized that often a homemaker who uses an open end account will play a significant role in maintaining the account--by making the monthly payments or by budgeting income and expenditures. Thus, the payment history may be as much a product of her contribution as that of the wage-earning husband.

The Equal Credit Opportunity Act and Regulation B provide other protections against discrimination on the basis of sex or marital status. Information may be obtained from the Office of Saver and Consumer Affairs, Federal Reserve Board, Washington, D.C. 20551.

Domicile

Domicile is affected by a woman's marital status. A person's domicile is determined by her/his physical presence plus her/his intent to reside permanently in a particular place. Many important rights and duties are controlled by the law of a person's domicile--or by the companion concept of residence, which is often defined to be domicile in a particular place for a specified period of time.

Historically, a married woman took the domicile of her husband "by operation of law" and could not choose her own domicile. Such a rule created particular problems when the couple was separated, and the wife was prevented from establishing a domicile of her own--even for divorce purposes. As a result, Wisconsin like many other jurisdictions recognizes the ability of the wife who lives apart from her husband to establish her own domicile. Wisconsin has for many years provided explicitly that a woman had the same right as a man in "her choice of

residence for voting purposes,[10] but the old rule may remain in effect, at least for some purposes.[11]

However with increasing regularity, the law is recognizing that a wife should be treated as the individual she is--with the ability to choose her own domicile. The recent State university tuition statute, for example, allows each adult student's residency to be determined on his/her own factual intent.[12]

Closely related to the rule that a wife takes her husband's domicile by operation of law is the rule that the husband has the right to determine the domicile of the family. In a State like Wisconsin, which still has the "fault" ground of desertion for divorce, this many mean that a wife who refuses to move if and where her husband chooses to move has deserted within the meaning of the statute.

Interspousal Immunity

An example of a significant interest controlled by a woman's domicile is that of her right to sue her husband if he injures her, either negligently or on purpose. A substantial number of States follow the rule that prevents one spouse from suing the other for injuries or damages. Others--like Wisconsin--take the more progressive view that spouses are individuals with the right to sue each other in tort. When an injury occurs, either by accident or as a result of assault, Wisconsin holds that a spouse's right to sue is controlled by the law of his/her domicile.[13]

Keeping Your Own Name

Most women who marry, particularly those who are primarily interested in careers as housewives and mothers, choose to use their husbands' names. This is such a general custom and such a widespread one that many

people--including courts and administrative agencies--have assumed that the law requires a woman to take her husband's name on marriage. The Wisconsin Supreme Court has made it clear that, at least in Wisconsin, this is not the law. A married woman may adopt her husband's name by using it, but she is not required to do so.14/ Increasingly, married women are choosing to retain their own individual identity on marriage.

The situation is not as clear where a wife who has used her husband's surname wishes to return to her own name. Under the common law, a person who wishes to change her/his name can do so by announcing publicly that her/his name is changed and by using the new name. A person may use any name he/she chooses, as long as it is not for a fraudulent purpose. This is, in fact, the way in which a married woman acquires her husband's surname. However, name changes understandably cause problems for businesses and government agencies. Obviously, they must be notified.

While the public and government agencies are accustomed to recognizing name changes for women on marriage, they are less familiar with a name change back to a former name and may be inclined--at least at present--to be more reluctant to recognize that type of change.

Some women have successfully changed their names back to their birth names on government records by presenting their birth certificates. It may be that an affidavit or a court order will be necessary in some cases. Wisconsin has a simple judicial procedure for changing names, which can be used.15/ This has the advantage of providing a clear public record of the change. A woman who has been licensed to practice a profession or trade under her married name may not be able to change her name without the approval of the licensing board or commission.

On divorce, a woman may resume a former name, and the divorce decree will so provide.[16] This type of change may be made by women licensed to practice a trade or profession without approval of the licensing agency.

All of this discussion about legal rights and who owns what may be superfluous in many families. Generally, husbands and wives share things, but when they do not, the non-earning wife has no legal means for forcing the reluctant husband to provide for her. Therefore, to assess the economic security of a housewife and mother, one should look at what happens to a dependent wife when the marriage ends through either death or divorce.

WIDOWHOOD

If your husband dies, what rights do you have in his estate? (In the brief discussion which follows, bear in mind that Wisconsin law treats husbands and wives equally;[17] so if you die, your husband has comparable rights in your property.) His estate would not include property you own (by gift from him or otherwise) or property which your husband and you both own as joint tenants (which belongs to you as the survivor). But land, stocks and bonds, bank accounts, and other property in your husband's name are in his estate.

Special Family Rights

Wisconsin has replaced its old homestead law, which would have allowed you to remain in your home--often provided in probate laws for the protection of a dependent spouse--with more modern provisions. During the administration of the estate, the court may make an allowance to you for family support.[18] The amount is whatever is reasonably necessary, but will vary with the circumstances. You are also entitled to certain personal property selected by you out of the estate: a car; household furniture, fur-

nishings, and appliances; plus other property not exceeding $1,000 in value.[19] If your husband should leave large debts, so that creditors would take all or most of the estate, the court can also assign property necessary for your future support in an amount not to exceed $10,000. If your home is in your husband's name, it could be included in this amount.[20]

If Your Husband Leaves No Will

After you receive the family allowance for your support and the personal property you select, as described above, creditors are paid. The balance is then divided among the "heirs," including you. You are the sole heir and receive everything if there are no children. If you and your husband have children, you receive the first $25,000. You also receive half of the balance if there is one child and one-third if there are more. If your husband had a child by a prior marriage, you would not receive the first $25,000 but would divide the estate with the child or children: half if there is only one child, one-third if there are two or more.[21]

If Your Husband Leaves a Will

Normally, you receive whatever is left you by the will. However, if the share is small, you can elect to take one-third of the estate instead. However, if you have received substantial amounts of other property from your husband in the form of life insurance, joint tenancy property, or other arrangements you may be prevented from breaking the will.[22] In other words, you cannot be completely disinherited. You should receive a minimum of about one-third of your husband's total wealth.

Agreements Regarding Estates

You and your husband can enter into a written agreement to establish rights in each other's property at death.

For example, you might agree to forego all rights in his estate in exchange for his promise to give up his rights in your estate if you should die first. Be sure you understand what you are signing when asked to sign such an agreement. The Wisconsin courts have not always been protective of the wife who signs such an agreement, even when it was drawn up by the husband's lawyer.23/ If all the property is in the husband's name, you are giving up a great deal, and he is giving up very little.

Inheritance Tax

The Wisconsin inheritance tax law provides a $50,000 exemption to a surviving spouse and taxes the remainder at a much lower rate than if the property goes to others.24/ Although the inheritance tax law treats both spouses equally, a wife who has not acquired any property of her own during her marriage is treated unfairly by the law when her husband dies. The inequity does not arise from the inheritance laws but from the separate property concept.

Perhaps the best way to illustrate the unfairness of these laws is to look at what would happen if the non-earning wife were to die before her property-owning husband. Ownership of the property acquired during the marriage would not be affected at all if the surviving husband owned it all. Therefore, his nondisinheritable one-third share is not necessary to ensure for him a share of the property acquired by the couple during their marriage. He does not need to pay inheritance tax on the entire marital property over the exemption.

Compare this with the situation where the wife is the survivor. Because her husband "owns" the property acquired during the marriage, she must pay inheritance tax on everything over her $50,000 exemption unless he has made "gifts" to her during the course of the marriage. In that case, of course, a gift tax must be paid. Although exemptions differ for gift and inheritance tax, the rates are the same. Furthermore, in neither case is the economic value of the housewife's contribution recognized.

A recent amendment to the Wisconsin inheritance tax law graphically illustrates the problem of the failure of the tax laws to recognize the value of the housewife's work.25/ Under this change, the survivor's share of a joint tenancy is not subject to inheritance tax regardless of who contributed the income to purchase it, if the joint tenancy is one in which there was a complete transfer at the time the joint tenancy was created--as in the case of real property or securities where all owners must sign to transfer the property. This change has been heralded as a recognition of the contribution of a homemaker to the family's acquisition of property, but that is not the ultimate result. Though a widow may not have to pay inheritance tax on jointly held property, a gift tax may be due if she has not made a monetary contribution to the purchase of the property. The Department of Revenue takes the position that homemaking is not valuable work because it is not paid. Furthermore, in calculating the inheritance tax, the total amount of this joint tenancy property is included in the estate and the survivor's share is treated as an additional exemption taken against the lower brackets of the tax rate.

The problem of inheritance and gift taxes is of particular importance to the farm wife who is widowed, because if she has to pay inheritance or gift tax on the entire farm, she may lose her farm. In the case of the farm wife who can show that she has worked in the farm enterprise--which is probably all cases--the Wisconsin Supreme Court has held that she has contributed to her share in the joint tenancy.26/ Therefore, she ought not be required to pay a gift tax on her share of the joint tenancy and the survivor's exemption will exempt her share of the joint tenancy from inheritance tax.

If a husband dies without a will and there are children of the marriage, two-thirds of the estate is taxed at the higher rate applicable to the children. The widow is entitled to a nondisinheritable share of only one-third, not one-half, of what may have been produced by the joint efforts of the couple. True, she is entitled

to one-third of all property owned by her husband when he died, including that which he brought to the marriage, but for most of us, who acquire our property by our own efforts over a lifetime, that is a nonexistent advantage. Furthermore, many husbands leave "their" money in trust with the income to their wives. If the trust gives the wife a general power to dispose of the property (necessary to qualify it for the Federal marital deduction), she cannot elect to take against the will. On the other hand, the right to election to take one-third is available to the wife if her husband leaves her more than one-third of his estate but does so in trust without giving her the right to sell or give away the property.27/

Federal Estate Tax

Current Federal law imposes an estate tax which must be paid when a person dies leaving property to persons or entities other than the government or charities. This tax is applicable when a husband leaves property to his wife, even jointly held property. It is ironic, and some believe very unfair, that the Federal tax applies and must be paid by a surviving spouse when the deceased spouse leaves everything to his/her marriage partner, but there is no tax due if the property is left to a governmental agency or to a charity.

The Tax Reform Act of 1976, which was signed into law on October 4, 1976, did not follow the International Women's Year Commission and Department of Treasury recommendations to eliminate taxation on all transfers of property between husband and wife at death and on all gifts between husband and wife during their lifetimes. Nor was the law revised to stipulate that the wife owned half of the estate because her contribution at home was considered an equivalent contribution. However, the law was revised and liberalized with the result that fewer estates will be subject to tax. The law raised the marital deduction and allows the surviving spouse to inherit without tax, $250,000

or half of the estate, whichever is greater. In addition, a new tax credit which is equivalent to an exemption of $120,667 is allowed. This exemption increases each year until 1981. Thus the marital deduction coupled with the tax credit exempts estates from taxation in 1977 up to $370,667, increasing to $425,625 in 1981.

However, in non-community property States where large estates of farms or businesses are concerned, many wives will still have to pay a tax when a husband would not. Particularly hard hit are farm wives who inherit large tracts of land which they may have co-owned and worked for many years. If the market value of the land is high, they frequently must sell at least part of the property to meet estate taxes. Under current law, the gross estate of a decedent includes the entire value of property held jointly by a husband and wife except to the extent that the surviving spouse establishes that the money to pay for the property was furnished by such survivor. This means that in most cases a man can prove that he has paid for joint property and a woman, because her work in the home has not been given economic value, cannot. Therefore, a wife, after taking whatever deductions allowable, may in fact owe tax on some amount of the estate whereas a husband would not.

To partially offset this discrepancy in the law, the Tax Reform Act does allow the husband to "give" his wife a gift of half of the jointly held property (subject to gift tax after the first $100,000). This would mean that for estate tax purposes, property would be treated as belonging 50% to each spouse. Thus each spouse would be subject to the estate tax in the same manner, in accordance with estate tax law.

It is important to note that this provision requires that one spouse "give" half of the real property in an estate to the other spouse as a gift. The law does not assume that the work done in the home has economic worth.

Social Security and Pensions

A wife whose husband is covered by one of the pension plans provided by many employers may be entitled to a "survivor's annuity" on the death of her husband. Since passage of ERISA (Employees Retirement Income Security Act) by Congress in 1974 it is required that pension and retirement plans offer "survivor annuities."[28] A worker may, however, choose not to cover his or her spouse and the law does not require that the spouse be informed of this action.

It should be noted also that survivor annuities generally apply to the pension benefits of retired workers. If a woman is widowed before her husband retires, even if he was due to receive a benefit and had allowed for survivor coverage, she would probably be ineligible for pension benefits.

Under ERISA divorced spouses may also be precluded from receiving survivors' benefits if they are not married to the retired worker for the year prior to death.[29] Requirements to receive survivor benefits are made even more conditional by the proposed Internal Revenue Service regulations under ERISA, which allow pension plans not only to require marriage for the year prior to death, but allow plans to require marriage at the annuity starting date.[30]

A wife whose husband is covered by social security is entitled under certain conditions to a benefit based on his employment record when he retires, dies or becomes disabled. A wife divorced prior to 20 consecutive years of marriage loses all eligibility for such benefits, unless he dies and she has children in her care who are entitled to a benefit based on his employment.

Even if she is divorced after 20 or more years of marriage, she would not be eligible for a benefit until he retired, was disabled or died. She would lose eligibility to her ex-husband's account on re-marriage.

DIVORCE

Problems for the dependent spouse are particularly severe when a marriage ends in divorce. It is then--when a husband may have set his sights on a new spouse--that his generosity with "his" property is usually at its lowest ebb.

For purposes of discussion, let's look at two hypothetical cases:

- Sarah who has been married five years and has two preschool children, ages one and three.

- Ann who has been married 19 years and has two teen-age children, a freshman and a junior in high school.

Both women have been homemakers and mothers and have never been employed outside the home. Let us look at three areas of concern for these mothers: (1) property division, (2) support, and (3) child custody.

Property Division

Wisconsin law allows the court to "finally divide and distribute the estate, both real and personal, of either party.31/ Historically, Wisconsin law provided for a division of the husband's property on divorce. It was a means of recognizing the role of the wife in contributing toward the accumulation of property during the marriage, although she did not own it because she had not produced income. Equally important, the law recognized that a woman who had not been in the job market for most of her adult life would have great difficulty supporting herself. Giving her some of the property accumulated by her husband is one means, in addition to traditional alimony, of providing for her support.

Recently the law has been changed to allow the court to divide the property of both spouses, but the courts still

regard the provision as primarily a means of providing for the homemaker spouse. However, now the statute recognizes that a husband may, in certain cases, be economically dependent on his wife. Husband and wife are treated equally in that respect.

The important thing from the point of view of the dependent spouse is the basis on which the division of property is made. The statutes provide that the division shall be made with "due regard to the legal and equitable rights of each party, the length of the marriage, the age and health of the parties, the liability of either party for debts or support of children, their respective abilities and estates, whether the property award is in lieu of or in addition to alimony, the character and situation of the parties and all the circumstances of the case. . . .32/

For many years the Wisconsin Supreme Court used one-third of the husband's estate as the guideline. In the last decade it has increasingly approved a fifty-fifty division, pointing out that "the division of the property of the divorced parties rests upon the concept of marriage as a shared enterprise or joint undertaking. It is literally a partnership, although a partnership in which contributions and equities of the partners may and do differ from individual case to individual case. In a brief marriage, particularly as to property which the husband brought to the marriage, one-third to the wife may be too liberal an allowance. In a long marriage, particularly as to property acquired by the parties during the marriage, a fifty-fifty division may well represent the mutuality of the enterprise."33/ Now that the legislature has provided for dividing the wife's property as well as the husband's, the fifty-fifty division is becoming more the rule.

Property division, however, is a matter within the discretion of the trial court and, therefore, wives will find considerable variance among judges. Some may take a fifty-fifty division as a base line; many will still view one-third as the normative standard.

In recent years, with the growth of public and private pension plans, a considerable portion of a family's assets may have been contributed to such a plan. The Wisconsin Supreme Court has wisely recognized this important family asset in determining what property must be included to obtain the total value of the property for division on divorce. Although the husband is not entitled to the pension at the time of the divorce, the court will include its present value, awarding the wife money or other property for her share.34/

In the cases of our two wives, property division will mean very little to Sarah, who has been married only five years. She and her husband have had little opportunity for accumulating property, particularly on a $15,000 per year salary. It may mean more to Ann because the length of her marriage means that some property, perhaps a house that is substantially mortgage free, will have been accumulated.

Support

For our two examples, the principal problem will be the amount of support Sarah and Ann are able to secure after divorce.

The support available after divorce to a woman with children is of two kinds: child support, which a father must pay until his children reach the age of majority (18 in Wisconsin), and wife support (termed alimony or maintenance), which is based on the need of the wife and the ability of the husband to pay and which ends when a wife remarries or becomes self-supporting. The Wisconsin statutes provide that alimony may be awarded for a limited time, although courts interpret the provision to allow alimony until remarriage.35/

Sarah is young enough to reenter the job market, but the age of her children makes full-time care for them mandatory. She must obtain support from her former husband sufficient either to enable her to stay home to care for the children or to provide adequate child care so she can work to support herself and the children.

In Ann's case, she will have difficulty becoming self-supporting because she has lost 19 years of experience and seniority in the marketplace. She may be able to make ends meet with child support added, but her former husband is required to pay child support only until the children reach the age of 18, even though they will still probably be in high school.

What can we tell Sarah and Ann about the amount of child support and alimony they might receive? Nobody in Wisconsin can really give them any specific information on the level of child support and alimony. No statistics are collected on the amount of awards. More importantly, there are no published standards for determining amounts, although at least one trial court has established some guidelines.[36] Alimony and child support, like property division, are set at the discretion of the trial court. The theory is that this will allow the trial court to judge each case on its individual merits, determining the best possible solution for that particular situation. What happens in practice is that the amount of award depends on the county in which the action is brought, the judge to whom the action is assigned, and the experience of the lawyers representing each side. One observer has remarked that the result depends as much on "the decision-maker's state of mind as it does on the quality of advocacy and the facts of the case."[37]

Although there are no established standards statewide there is general agreement that a noncustodial parent will always be ordered to pay some amount, even a nominal amount of $10 or $15. How high the support award might be is less certain. In our examples, each husband's income is $15,000. After deducting federal income tax,

Wisconsin State income tax, and Social Security tax, he would have a net income of about $959 per month. On that income, experience indicates child support could range from $250 to $400 per month for two children. It is generally believed that the court will not order a parent to pay more than one-third of his/her take-home pay in child support apparently because of concern that a higher amount will only result in default.

There is one other point about child support that mothers should remember. Even though a mother was not gainfully employed during marriage, once that marriage is dissolved she, as well as the father, has an obligation to support her children. She cannot realistically expect the courts to ignore any ability she may have to contribute toward the support of her children. Of course, since she is usually the custodian of the children, she will be providing part of the child support through her services. In addition, a recent change in the statutes requires that, if she remarries, the income of her new spouse be considered by the court in modifying child support.[38]

How the courts will determine alimony is even less predictable than child support decisions. Whether or not to grant alimony, how much it will be, and for how long, are all matters in the discretion of the trial court. Only one thing is certain--a spouse who is guilty of adultery is not entitled to any alimony.[39] Except for that kind of misconduct, the courts have said that a dependent spouse should not be punished for fault in the alimony award, although it is one of the factors to be taken into consideration.[40]

Several things are quite clear on the subject of alimony. One is that the courts are reluctant to take away so much of a man's earnings that he feels burdened, quits paying, and leaves the jurisdiction. Court personnel generally feel that a lower support amount, regularly paid, is more beneficial to children and ex-spouses than a higher amount

that may soon be unpaid. This is true of both child support and alimony.*

The purpose of alimony is not seen as a means of providing support for a woman in the manner to which she has become accustomed--even though sometimes appellate court opinions contain that language. The issue is the extent to which a dependent spouse can become self-supporting. Ann, who has been married 19 years and who has not worked outside the home for those years, may be treated with sympathy by the courts because she will have difficulty supporting herself, not because she is entitled to be supported for life by her ex-husband.

Enforcement of Support

Just as important as the amount of child support or alimony is the issue of collecting it. Wisconsin has extensive legislation providing for the enforcement of court orders for support. These statutes can be divided into two groups: (1) those ensuring a source of support money and (2) those establishing a mechanism for collecting unpaid money.

Ensuring a Source of Support Money

Wisconsin law gives a court authority to order a parent to assign enough of his/her salary or wages to the clerk of court to cover the support ordered.[41/] Such a device allows the deduction of support from the

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*Note from Martha Griffiths: No data supports the assumption that lower amounts are more frequently paid. Research by the General Accounting Offices of selected welfare cases indicates that neither the amount of the award nor relative ability to pay is significant. (Cong Rec, Dec. 4, 1974, p. H11291).

payor's check like union dues, taxes, and Social Security. The result is that the "take-home pay" does not include the court-authorized amount--an advantage already recognized by the government and unions! Apparently the provision has not had extensive use in the State--partially because some employers were irked by the requirement and discharged employees, even though the statute explicitly provides that such an assignment cannot be the basis for discharge. Now, however, increasing use of the statute is reported, in some cases with the willing cooperation of the payor. The major shortcoming of the provision is that it is unavailable in the case of self-employed persons.

A court may also make the support a charge upon real property owned by the supporter or may require the creation of a trust to ensure payment.[42] The extent to which these kinds of provisions are used is not known, although the general consensus is that they are used very little. Most people just do not own enough property nor do they have sufficient capital to make such provisions workable, although the property lien may be useful in the case of a landholder who wishes to sell his land, but can't because of the lien.

Establishing a Mechanism for Collecting Unpaid Money

When a court orders the payment of child support or alimony, the statutes provide that payment shall be made to the clerk of the court to be disbursed by that office in accordance with the court order. This means that in Wisconsin, unlike many States where payments are made directly to the spouse, there is an official record of support ordered and payments made--a good first step for any collection program.

Prompted by Federal requirements in the new child support collection program, discussed later in this paper, Wisconsin has enacted new legislation, effective January 11, 1977, which is intended to strengthen the mechanism for collecting support money.[43] Each county now has a county child support agency charged with the duty to establish

paternity when possible and to enforce support obligations owed by absent parents to their children.[44] There is an agency in the county to which a nonsupported homemaker may turn for help in collecting support.

The statutes contain both civil and criminal enforcement mechanisms.[45] The usual procedure followed is to cite the nonpayor for contempt of court. This can be an effective weapon against the unwilling supporter because he can be jailed if he still refuses to meet his obligation. He can be sentenced to jail under the "Huber Law," which allows him to leave the jail for part of each day to work, with his earnings going to support his family after charges for his board are deducted.[46]

The criminal statutes on nonsupport are used less often than the civil contempt remedy. Again, there is little information available on whether the criminal offense is charged more often than the civil. Apparently in some counties it is used as the principal means of enforcement. Although few people are imprisoned for nonsupport, probation is used because it allows a father to continue living in the community and working at his job under the surveillance of a probation officer who sees that support payments are made. The Wisconsin Bureau of Probation and Parole reports that about five percent of its case load are nonsupporters.

A mother whose ex-husband leaves the State may face the problem of obtaining a support order. Under Wisconsin law, she has two possibilities. She may use the Revised Uniform Reciprocal Enforcement of Support Act[47] to obtain a court order in the other State. The local district attorney will help her. As an alternative, she may have her own attorney use the Wisconsin "long arm" statute[48] which authorizes personal jurisdiction for support if the defendant had resided in this State in a marital relationship with the plaintiff for not less than six consecutive months within the six years before the beginning of the action.

The advantage of this latter provision is that the determination of the amount of support is made under Wisconsin law by a Wisconsin court, which may be more aware of the cost of living in Wisconsin and more sympathetic to the needs of mothers and children resident in this State.

Once an order is obtained, the principal means of enforcing it out of State is the Revised Uniform Reciprocal Enforcement of Support Act. This act, which was intended to make it easier to collect support from nonresident parents, has not been as effective as it could be for two reasons: (1) often the nonpaying parent disappears and cannot be located and (2) States are often less than enthusiastic about collecting support from their residents for the benefit of nonresidents.

In the past, in Wisconsin, as elsewhere, enforcement of child support has been very poor. One commentator has characterized court-ordered support as "an empty promise." There is little empirical data available on the degree of compliance with support orders. A study a number of years ago of support orders in one Wisconsin county found that after a year only 38 percent of the fathers were complying fully with the support order.[49/] However, one county found in 1975 that it was receiving 76 percent of the total amount of support payable--up from 56 percent five years earlier.[50/] This was a county in which a full-time family court commissioner office was available to collect unpaid support on complaint. The new county child support agencies ought to make this kind of collection possible in more counties.

Assistance From Federal Government in Collection of Support

The Federal government has stepped in to aid in collection of child support, and in some cases alimony. Concerned about the effects on welfare costs of the failure to collect support payments, the Congress in late 1974 amended the Social Security Act to strengthen collection of child support payments both for families on Aid to

Families with Dependent Children and other families (Public Law 93-647). The law also authorized garnishment of Federal wages, pensions, and other remuneration of persons defaulting on alimony or child support payments.

The child support collection program, usually referred to as the "IV-D" program, provides financial penalties for States unless they establish by January 1, 1977 an efficiently operating unit to help in collecting child support payments for all families. The units are to establish paternity, secure court orders for child support, locate defaulting parents, and collect the payments. A charge is made for collecting for families not on welfare. The Federal government was directed to establish a parent locator service to help in finding defaulting parents, and it is now in operation.

The new program is not yet operative effectively in all States. Women in Wisconsin needing the help of the unit should write or call:

Bureau of Child Support
Division of Family Services
Department of Health and
Social Services
3434 Memorial Drive
Madison, Wisconsin 53704
Phone (608) 241-5264

Women concerned about this problem should monitor the performance of the Support Enforcement Services and see to it that mothers on welfare are justly treated and protected from harassment and that the collection of support for families not on welfare is included in the program as intended by the Congress.

Questions concerning the national aspects of the program can be addressed to:

Office of Child Support
Department of Health, Education,
and Welfare
Washington, D.C. 20201

Phone (202) 245-8717 or 245-1943

or to your representative in the Congress.

The new law also authorizes garnishment of salaries and pensions of Federal employees, including military personnel who have defaulted on alimony or child support payments, and provides for garnishment of Social Security benefits paid to the person on whose employment they are based.

The U.S. Civil Service Commission has been directed by the President (Executive Order No. 11881) to prescribe regulations for implementing the garnishment provision. The regulations are expected soon but have not been issued as this went to press. Information can be secured from:

Office of Public Affairs
U.S. Civil Service Commission
Washington, D.C. 20415

Phone (202) 632-4588

or by writing your representative in the Congress.

Child Custody

Throughout this discussion we have assumed that the wife would have custody of the children. In the past this was a proper assumption, because in the overwhelming majority of divorce cases the mother received custody of the children. In fact, for many years Wisconsin law gave preference to the mother, and, unless she was found unfit, she received custody of the children. Now, however,

the law has been changed, and the statute provides that "In determining the parent with whom a child shall remain, the court shall consider all facts in the best interest of the child and shall not prefer one parent over the other solely on the basis of the sex of the parent."[51]

The Wisconsin Supreme Court has explained that the statute does not mean that the close attachment between a mother and her children should be ignored.[52] However, in several parts of the State the number of custody disputes has greatly increased as more fathers seek custody. In one county, a report covering the seven years from 1967 to 1974 showed that in custody disputes in which the Family Court Counseling Service made studies, the mother was granted custody in 46 percent of the cases and the father 37 percent, with custody split in 9.1 percent of the cases and going to others in 7.2 percent. Some lawyers who represent women clients feel that many men are threatening to seek custody as a bargaining point on the economic issues.

Current Practice

What are the chances of your marriage ending in divorce? Wisconsin still requires proof of "fault" for divorce, the "no-fault" grounds being limited to cases of voluntary separation for a year or the mental illness of one spouse.[53] However, close observers of the Wisconsin divorce scene--lawyers handling divorce cases, family court commissioners, and family court judges--agree that in most cases if one spouse, even if technically the one "at fault," wants a divorce, the other spouse will go along, albeit reluctantly. Fault may play a role, not on the issue of whether or not a divorce is granted,[54] but in consideration of property division, alimony, or child custody. Regardless of the grounds for divorce, the Wisconsin divorce rate is increasing, from .9 per thousand population in 1960 to 2.5 per thousand in 1973. Although this rate is only about half that of the national rate (4.4 per thousand population in 1973)[55] it indicates that increasing numbers of women will find themselves facing the emotional and economic problems of divorce.

WIFE ABUSE

Most of this paper has been devoted to considering the economic aspects of marriage. We ought to look, however, at one other aspect of the treatment of wives in an on-going marriage--the phenomenon of physical mistreatment, or, wife abuse. This is an aspect of the marital relationship--cutting across all economic and social classes--which only recently has come to be widely recognized. There is still not enough known about the problem to be able to document its incidence; some estimate that wife beating occurs in one out of five marriages.[56]

Wife beating is, of course, a crime like any other assault. It may be a misdemeanor, for example, battery, carrying a maximum penalty of $200 fine or six months in jail or both,[57] or, if severe injury results, it may be a felony carrying a maximum penalty of $2,500 fine or five years in prison or both.[58] One of the problems with use of the criminal penalty for wife beating is the doubt that it is effective in protecting the wife. There is some evidence that wives do not report their husbands' brutality out of fear of reprisal.[59] Even when the wife does report, the district attorney and judges, unfamiliar with problems of intrafamily violence, may treat the case superficially, relying, for example, on courtroom verbal promises or fines without full realization of the seriousness of the situation.[60]

Unfortunately, there are very few places in Wisconsin to which the abused wife may turn. The police department--often the only 24-hour social service agency available in a city--may be unsympathetic, unless the wife agrees to press charges. However, at least one police department is developing a specialized procedure for handling family disputes, based on the premise that criminal prosecution may not be the solution to the problem. Another important recent development is the appearance of volunteer feminist organizations in Madison and Milwaukee to render assistance to abused wives.[61] Help may be on the way.

Often the only real solution to wife beating may be separation or divorce. Unfortunately, the process of obtaining a divorce may pose danger to the wife. An abusive husband served with a summons in a divorce action may react as he has in the past--by beating his wife. Although the statutes are not particularly clear,[62] it has always been assumed in Wisconsin that the family court commissioner has the authority to order a husband out of the family home pending divorce. Although this authority has been questioned recently in the case of a routine (ex parte) order to a husband to vacate at the beginning of the divorce action, a showing by the wife that "she will likely be subject to physical abuse and that she is unable to temporarily reside elsewhere" probably furnishes the basis for a protective order that is enforceable, if necessary, by criminal contempt.[63]

Even removal of the husband from the house may not protect the abused wife because, in some cases, he will return to beat and rape her. One recent advance in the law is the new Wisconsin sexual assault law that makes it a crime for a man to rape his wife if they are living apart and an action for annulment, legal separation, or divorce has been begun.[64]

Many women are unwilling or too fearful of a change in their life situation to seek divorce to save themselves and their children. Perhaps with increasing recognition of wife beating as a social problem, more abused wives will follow the solution of ending the marital relationship.

SUMMARY

The role of housewife and mother in Wisconsin is one of much honor. Although no one wishes to denigrate that honor or to fail to recognize the significance for society of that role, it must be admitted that it is one to which

little economic reward is currently attached. Traditionally, the homemaker has been "protected" by giving her an interest in the money and property "belonging" to her husband because he is the income producer. Increasingly, Wisconsin law has moved to equal treatment of spouses--a most laudatory development. Unfortunately, the equal treatment has not extended to recognition of the significant economic role that a housewife and mother plays in the accumulation of wealth in a marriage.

NOTE ABOUT THE AUTHOR

Marygold Shire Melli is professor of law at the University of Wisconsin, from which she received both her BA and her LL.B. She teaches family, juvenile, and criminal law.

From 1974-1976, Professor Melli was Chair of the Family Law section of the Wisconsin State Bar and now serves as Reporter for that section.

Professor Melli is married and has four children.

FOOTNOTES

1. Scolman v. Scolman, 66 Wis. 2d 761, 768, 226 N.W. 2d 388, 391 (1975).

2. G. B. Shaw, The Intelligent Woman's Guide to Socialism and Capitalism, pp. 196-197 (1928), quoted in Younger, Community Property, Women and the Law School Curriculum, 48 N.Y.U. Law Review 211 (1973).

3. Wis. Stat. §§ 72.81, 72.82 (1975).

4. Eva Johnson does not exist, although this case example is based upon an actual situation.

5. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws" (1972).

6. Clark, Law of Domestic Relations 186 (1968).

7. Wis. Stat. § 246.05 (1975).

8. Skaar v. Department of Revenue, 61 Wis. 2d 93, 211 N.W. 2d 642 (1973). See also Stern v. Department of Revenue, 63 Wis. 2d 506, 217 N.W. 2d 326 (1974). This kind of problem arose in relation to income tax because Wisconsin, unlike the Federal Government does not allow married couples to file a joint return.

9. Work in America (Report of a Special Task Force to the Secretary of Health, Education and Welfare) pp. 64-66 (1973). Boulding, "Familial Constraints on Women's Work Roles," 1 Signs: Journal of Women in Culture and Society 95, 112 (Spring 1976).

10. Wis. Stat. § 246.15 (1975).

11. In re Daniel's Estate, 53 Wis. 2d 611 (1972).

12. Wis. Stat. § 36.27 (1975).

13. Haumschild v. Continental Casualty Co., 7 Wis. 2d 130, 95 N.W. 2d 814 (1959).

14. In re Kruzell, 67 Wis. 2d 138, 266 N.W. 2d 458 (1974).

15. Wis. Stat. § 296.36 (1975).

16. Wis. Stat. § 247.20, c. 94 Laws 1975.

17. The Wisconsin Probate Code was revised in 1969.

18. Wis. Stat. §861.31 (1975).

19. Wis. Stat. §861.33 (1975).

20. Wis. Stat. §861.41 (1975). See Wis. Stat. §§852.09 and 861.13 (1975) for special provisions on the family home on intestate succession or on election against a will.

21. Wis. Stat. §852.01 (1975).

22. Wis. Stat. §861.07 (1975).

23. Estate of Beat, 25 Wis. 2d 315, 130 N.W. 2d 739 (1964).

24. Wis. Stat. §§72.17 and 72.18 (1973).

25. Wis. Stat. §72.12 (6), as amended c. 222 Laws 1975.

26. Estate of Kersten, 71 Wis. 2d 757, 239 N.W. 2d 86 (1976). The Kersten case involves the inheritance tax and a provision in the law, now changed, that taxed all of the property held in joint tenancy, on the death of one of the owners, unless the survivor could show that he/she had acquired his/her interest for full consideration in money or money's worth. The court held that Mrs. Kersten, a farm wife who worked on the farm, had made a continuing contribution in services, industry, and skills to operation of the farm enterprise which constituted contribution "in money's worth."

27. Wis. Stat. §861.07 (1975).

28. For further information on pensions and social security write for these publications: U.S. Department of Labor, Labor Management Services Administration, Often-Asked Questions About the Employment Retirement Income Security Act of 1974, Washington, D.C. 20216; U.S. Department of Health, Education, and Welfare, Social Security Administration, "A woman's guide to social security," DHEW Publication No. (SSA) 75-10127, June 1975, Washington, D.C. 20201.

29. P.L. 93-406, Employees Retirement Income Security Act, Section 205(d).

30. Internal Revenue Service, Proposed Regulation on Joint and Survivor Annuities, issued October 3, 1975, Section 1.104 (a)-11 (e)(2).

31. Wis. Stat. §247.26 (1975).

32. Ibid.

33. Lacey v. Lacey, 45 Wis. 2d 378, 173 N.W. 2d 142 (1970); Anderson v. Anderson, 72 Wis. 2d 631, 242 N.W. 2d 165 (1976).

34. Parsons v. Parsons, 68 Wis. 2d 744, 229 N.W. 2d 629 (1975).

35. Czaicki v. Czaicki, 73 Wis. 2d 9, 242 N.W. 2d 214 (1976).

36. See Judge Leon H. Jones's (Manitowoc County) Alimony and Support Guide.

37. R. Danley, "A Story of Discretion and Power in Wisconsin's Family Law 2" (unpublished paper for course in Sociology of Law, University of Wisconsin Law School).

38. Wis. Stat. §247.25 (1975).

39. Wis. Stat. §247.26 (1975).

40. Tonjes v. Tonjes, 24 Wis. 2d 120, 128 N.W. 2d 446 (1964).

41. Wis. Stat. §247.265 (1975). Such a provision is a part of the Uniform Marriage and Divorce Act, but has been adopted by few States.

42. Wis. Stat. §247.30, 241.31 (1975).

43. Wis. Stat. §59.07 (97) (1975).

44. Wis. Stat. §46.25 (1975).

45. Wis. Stat. §§247.29, 52.05, 52.055 (1975).

46. Wis. Stat. §56.08 (1975).

47. Wis. Stat. §52.10 (1975).

48. Wis. Stat. §§247.057, 801.05 (11) (1975). Dillon v. Dillon 46 Wis. 2d 659, 176 N.W. 2d 362 (1969).

49. K. Eckhardt, "Social Change, Legal Controls, and Child Support: A Study in the Sociology of Law." (1965 doctoral dissertation on file in U.W. Memorial Library). See also Eckhardt, "Deviance, Visibility, and Legal Action: The Duty to Support," 15 Social Problems 470 (1968).

50. Telephone conversation with Dane County Family Court Commissioner.

51. Wis. Stat. §247.24 (3) (1975).

52. Scolman v. Scolman, supra, note 1.

53. Wis. Stat. §247.07 (1975).

54. Official doctrine is that fault (except adultery, which bars alimony) does not affect alimony or property division, but is to be "taken into consideration." In child custody, fault is not important

unless it relates to the care which the child will receive, Molloy v. Molloy, 46 Wis. 2d 682, 176 N.W. 2d 292 (1970).

55. United States Department of Commerce, Statistical Abstract of United States 1975.

56. "Wife Beating: A Serious Dilemma," Wisconsin State Journal, p. 1, sec. 4, June 6, 1976.

57. Wis. Stat. §940.20 (1975).

58. Wis. Stat. §940.22 (1975).

59. Supra, note 56.

60. Hart, "Thomas Promised That He Would," New York Times, June 10, 1975. See also Maitland, "Courts Easy on Rising Family Violence," New York Times, p. 1, June 14, 1976.

61. Supra, note 56.

62. Wis. Stat. §247.23 (1) (1975).

63. Geisinger v. Voss, 352 F. Supp. 104 (E.D. Wis. 1972).

64. Wis. Stat. §940.225 (6), c. 184 Laws 1975.

RECOMMENDATIONS OF THE HOMEMAKER COMMITTEE*
(All Adopted by the Commission)

REFORMING ESTATE, INHERITANCE, AND GIFT TAX LAWS**

The IWY Commission recommends that the provisions of the Internal Revenue Code relating to estate and gift taxes be amended to eliminate taxation on all transfers of property between husband and wife at death, and on all gifts between husband and wife during their lifetimes.

The Commission further recommends that State legislatures amend their tax laws to eliminate laws that provide for inheritance or gift taxes in transfers between husband and wife.

COVERAGE OF HOMEMAKERS UNDER SOCIAL SECURITY

The IWY Commission recommends that the homemaker be covered in her own right under Social Security to provide income security for the risks of old age, disability, and death. The Commission further recommends that the Secretary of Health, Education, and Welfare be directed to give a high priority to developing an administration proposal for achieving this purpose.

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*Copies of the recommendations with supporting position papers are included in the report of the Commission "...To Form a More Perfect Union..." Justice for American Women available from the Government Printing Office, Washington, D.C. 20401.

**The Secretary of the Treasury recommended abolition of these taxes in transfers between spouses to the Ways and Means Committee of the U.S. House of Representatives in testimony of March 22, 1976.

INHERITANCE RIGHTS OF SPOUSES

The IWY Commission recommends that State inheritance laws on disposition of property when a person dies without a will (intestate) be amended to provide that the surviving spouse's share is:

(1) if there is no surviving child or parent of the person who dies, the entire estate;

(2) if there are surviving children all of whom are children of the surviving spouse also, the entire estate;

(3) if there are surviving children one or more of whom are not children of the surviving spouse, one-half of the estate.

The Commission recommends further that State Bar Associations, especially women members, and the National Conference of Commissioners on Uniform State Laws in order to provide greater considerations of equity review and redraft (a) the provisions when there are no surviving children but there are surviving parents, and (b) the provisions for a "forced share", or "widows election".

ECONOMIC PROVISIONS OF DIVORCE LAWS

The IWY Commission urgently recommends that State, county, and city commissions on the status of women, and other organizations concerned with the welfare of children and dependent spouses, actively seek amendments in State divorce laws where necessary to assure that as a minimum the economic protections of the Uniform Marriage and Divorce Act* for dependent spouses and children are included.

*National Conference of Commissioners on Uniform State Laws, Uniform Marriage and Divorce Act (1970 version and 1974 version). Order from National Conference of Commissioners on Uniform State Laws, 1155 East Sixtieth Street, Chicago, Illinois 60637.

The Commission further recommends that State legislatures review and revise their divorce laws, adopting as a minimum the economic protections of the Uniform Marriage and Divorce Act.

The Commission recommends also that in addition to the protections of the Uniform Marriage and Divorce Act the following additional items be seriously reviewed and considered: (a) an effective provisio requiring disclosure of assets, such as that in the New York law (Section 250 of the Domestic Relations Law effective September 1, 1975); (b) authorization of child support until age 26 for children who are attending school; (c) the property divisions provisions that were in the 1970 version of the Uniform Marriage and Divorce Act; (d) specific mention of loss of pension rights as a factor to be considered in distribution of property; and (e) inclusion of a statement of intent such as that in Assembly Bill 995 introduced in the Wisconsin Assembly in 1975.

The statement of intent reads as follows:

> It is the intent of the legislature that a spouse who has been handicapped socially or economically by his or her contributions to a marriage shall be compensated for such contributions at the termination of the marriage, insofar as this is possible, and may be reeducated where necessary to permit the spouse to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. It is further the intent of the legislature that the standard of living of any minor children of the parties be maintained at a reasonable level, so that insofar as is possible, the children will not suffer economic hardship.

DISPLACED HOMEMAKERS BILL

The IWY Commission recommends that the Administration endorse H.R. 10272, known as the "Equal Opportunity for

Displaced Homemakers Act," which provides for establishing multi-purpose service programs for displaced homemakers to help them through a readjustment period so as to become self-sufficient members of society.

GOVERNMENT COLLECTION OF DATA ON DIVORCE, ALIMONY, PROPERTY DIVISION, CHILD CUSTODY, AND CHILD SUPPORT

The IWY Commission strongly urges that the 1976 Survey of Income and Education* which is to be conducted by the Census Bureau include questions which will provide answers to the following:

- How are children of divorced parents being supported, i.e., what proportion of the support is being contributed by each parent and by the Government as welfare?
- In what proportion of divorces is alimony awarded and in what amount?
- In what proportion of cases is child support awarded and in what amount?
- How is property divided?
- To what extent are alimony and child support awards being collected?
- To what extent are fathers getting custody of children? Are mothers paying child support in such cases?

*Through the cooperation and interest of the Department of Health, Education, and Welfare, some of the information requested will be collected in the 1976 Survey of Income and Education. The Department hopes to find collection of the additional data requested plus other information on single parent families.

- What are the relative economic situations, after divorce, of the spouse with custody of children and the other spouse?

- What is the economic status of women who are divorced after many years of homemaking and little labor force experience?

The Commission further recommends that such data be secured in each decennial census.

STATE HELP IN COLLECTING CHILD SUPPORT PAYMENTS FOR FAMILIES NOT ON WELFARE

The IWY Commission recommends that Sec. 455(2) of Public Law 94-88, which requires the termination on June 30, 1976 of Federal support to administrative costs for child support collection services for non-AFDC mothers, be amended to eliminate the deadline.

USEFUL PUBLICATIONS

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2. Bingaman, Anne K., "The Impact of an ERA on the Financial Rights of Married Women: An Overview," November 1975 issue of Pepperdine Law Journal, in press.

3. Citizens' Advisory Council on the Status of Women, "The Equal Rights Amendment and Alimony and Child Support Laws," and "Recognition of Economic Contribution of Homemakers and Protection of Children in Divorce Laws and Practice." Single copies free from Council, Room S3306, U.S. Dept. of Labor Building, Washington, D.C. 20210. Tel: (202) 523-6538.

4. Conlin, Roxanne, Equal Protection Versus the Equal Rights Amendment--Where Are We Now, 24 Drake Law Review, 259 at p. 289.

5. Cooey, Edward W., "The Exercise of Judicial Discretion in the Award of Alimony," VI Law and Contemporary Problems, 213, Spring 1939.

6. Foster, Henry H., Jr., and Freed, Doris Jonas, "Law and the Family," New York Law Journal, October 26, 1973, p. 1.

7. Freed, Doris Jonas and Foster, Henry H., Jr., Economic Effects of Divorce," VII Family Law Quarterly 275, Fall 1973. Order from American Bar Association, 1155 East Sixtieth Street, Chicago, Illinois 60637. $3.00.

8. General Accounting Office, New Child Support Legislation - Its Potential Impact and How to Improve It, Report to the Congress by the Comptroller General of the United States, B-164031(3), April 1976, Washington, D.C. Available from your Congressman or Senator.

9. Goode, William J., Women in Divorce, The Free Press, 877 Third Ave., New York 10022, 2nd Printing 1969, $3.50.

10. Hopson, Dan,"The Economics of Divorce: A Pilot Empirical Study at the Trial Court Level," 11 Kansas Law Review 107, 1962.

11. Kay, Herma Hill, "Making Marriage and Divorce Safe for Women: 60 California Law Review 1657, 1972. Order from Fred B. Rothman and Co., 57 Leuning Street, South Hackensack, New Jersey 07606, $3.50.

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13. Marriage, Divorce, and Family Newsletter, Betty Berry, editor, P.O. Box 42, Madison Square Station, New York, New York, 10010. Subscriptions $7.70 for individuals, $12.00 for organizations, and $10.00 for overseas subscribers.

14. Nagel, Stuart S. and Weitzman, Lenore J., "Women as Litigants," 23 Hastings Law Journal, 171, November 1971.

15. National Commission on the Observance of International Women's Year, Recommendations of the Homemaker Committee on divorce, inheritance and estate tax, probate law, and social security coverage of the homemaker. Secretariat for International Women's Year, D/IWY, Room 1004, Department of State Building, Washington, D.C. 20520. Tel: (202) 632-8888.

16. National Conference of Commissioners on Uniform State Laws, "Uniform Marriage and Divorce Act" (1970 version and as amended in 1974) and "Uniform Probate Law." Order from National Conference of Commissioners on Uniform State Laws, 645 N. Michigan Avenue, Chicago, Illinois, 60611, $1.00 each.

17. National Council on Family Relations, Journal of Marriage and the Family, Vol. 33, No. 4, November 1971. Special Issue on "Violence and the Family," 1219 University Avenue, S.E., Minneapolis, Minnesota 55414, $3.50.

18. Riederer, Henry A., "Marriage Dissolution Trends: An Analysis of a Missouri Bar Survey," IV Family Law Quarterly, 184, January 1970.

19. Ross, Susan C., "The Rights of Women," An American Civil Liberties Union Handbook, Discus Books, $1.25.

20. Rutman, Laurence D., "Departure From Fault," 1 Journal of Family Law, 181 (1961).

21. Sassower, Doris, "Matrimonial Law Reform: Equal Property Rights for Women," Testimony before the Joint Matrimonial Committees, N.Y. City Bar Association and the N.Y. County Lawyers Association, January 14, 1972, in 44 N.Y. State Bar Journal 406 (1972).

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*U.S. GOVERNMENT PRINTING OFFICE: 1977-233-930/6242

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INTERNATIONAL WOMEN'S YEAR
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Washington, D. C. 20520

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IWY in Mexico City, 1975

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